




Exécution judiciaire en Europe European judicial enforcement

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Co-financed by the European Union, the EJE project aims to improve the enforcement of court judgments in Europe by providing European citizens, court bailiffs and enforcement officers with the information needed to enforce court judgments in the territory of another member state. This project also intends to improve the mechanisms for cooperation and communication among judicial officers in Europe. In order to reach these objectives, the EJE project is equipped with a key instrument: the EJE web site - www.europe-eje.eu - which provides citizens and legal professionals with the information on the legal tools and procedures to be used when they want to enforce a judgment in the territory of another member state.

In this regard the EJE project publishes a newsletter which aims to inform European bailiffs and law officers and people interested in the progress made with this project. It also seeks to provide information about the latest developments in European legislation and case law that may be of interest to the profession as an essential player in constructing the European area of justice, freedom and security.

For further informations on EJE project

 Download the presentation brochure

 Consult EJE website www.europe-eje.eu

EJE News

The members of the EJE project make comments on the proposal for a regulation creating a European Account Preservation Order

The partners in the EJE project, which brings together the representative organisations of the profession of judicial officer in Germany, Belgium, Scotland, Hungary, Italy, Luxembourg, the Netherlands and Poland in order to improve the enforcement of court judgments in Europe, support the creation of a European procedure for the attachment of bank accounts.

The partners of the EJE project welcome the initiative of the European Commission which aims to establish a European bank account preservation order. They are also delighted at the recognition of the role of enforcement agents in the implementation of a European freezing order, since enforcement agents are the best guarantee of legal certainty, of the speed of the procedure and of the protection of the rights of the parties involved.

Indeed, at present, procedures for recovering debts from another country's jurisdiction are complex and expensive. A creditor wishing to attach sums deposited in a foreign bank account must then refer the matter to the judge in the country where the bank is located.

But there are disparities between Member States' national legislation. Obstacles for creditors are created by the differences in legal systems, varying procedural requirements and linguistic barriers, which all results in difficult access to the law and entails additional costs and delays in implementing the procedure, even though the main point of a procedure to attach bank accounts is that it be done quickly.

However, the attachment of a debtor's bank accounts should be an effective way for a creditor to recover sums of money due to him. At a time when, because of the free movement of people, companies, services and goods, debtors increasingly have bank accounts in different Member States and at a time when the development of technologies has enabled sums of money to be transferred very quickly from one Member State to another, the current system does not allow these funds transfers to be blocked just as quickly and at a low cost.

Given these obstacles, it seems to us that it is a necessity to create a European order for the attachment of bank accounts which would enable accounts in different Member States of the EU to be attached while still ensuring a high degree of protection of debtors, in particular through allowing the notification of the attachment at short notice.

However, a high level of protection of the rights of parties, in particular the debtor's right, should be ensured. A judicial officer's intervention – as the enforcement agent under the European procedure for the attachment of bank accounts - guarantees legal certainty and the protection of the debtor's rights. For the procedure's effectiveness to be enhanced and for the debtor to be fully protected, judicial officers/enforcement agents are the key agents to make the attachment of the property in the hands of the bank and to notify the debtor of the attachment. This protection is crucial, given that a European order for the attachment of bank accounts would be issued following ex parte proceedings. Notification of the debtor is the first of these guarantees. Only the judicial officer is able to ensure that the debtor is given adequate information.

However, the partners of the EJE project consider that some articles must be clarified and consequently they wished to make their comments.

Among these comments, and even if the implementation of the EAPO and the service of the order on the debtor by the hand of a judicial officer – enforcement authority - is the best guarantee of the protection of the rights of the debtor (because only the judicial

officer is able to ensure adequate information of the debtor), the EJE partners invite the European institutions to provide additional information regarding the time limit in which the EAPO shall be served.

Article 24 paragraph 3 subparagraph c) provides that « The competent authority shall serve the EAPO on the bank or banks specified therein. The competent authority shall take all necessary steps to effect service of the order within 3 working days of receipt at the latest ». This article does not reflect the situation in which the competent authority receive an EAPO which would require obtaining additional information in accordance with the procedure laid down in Article 17.

Article 25 paragraph 1 of the proposal is as follows: « The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay after service on the bank has been effected pursuant to Article 24 and the bank has issued the declaration pursuant to Article 27". The project partners EJE consider the notion of «undue delay» cannot provide legal security required by the implementation of a EAPO. A specified period, which could be 8 days from the date of service of the EAPO, should be stated.

- Read the proposal for a regulation creating a European Account Preservation Order - <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0445:FIN:EN:PDF>
- Read the comments of the EJE partnership on the proposal for a regulation creating a European Account Preservation Order ([cf annexe](#))

Presentation of the EJE project during the «European Day of Civil Justice 2011» – Toulouse – 25 octobre 2011

The EJE project was presented on October 25 at the «European Day of Civil Justice 2011» celebrated in Toulouse.

Like the other major «European Days», the European Commission and the Council of Europe established in 2003 a «European Day of Civil Justice,» celebrated every year on October 25, to bring civil justice within reach of European citizens and to facilitate their access to civil justice.

By creating this « European day », the European Commission and the Council of Europe wanted to create a symbolic event aimed at put the spotlight on civil justice and at encouraging the organization of information and awareness that will enable participants to better understand the functioning of judicial systems and instruments of civil justice. The day also contributes to the awareness of the emergence of a common judicial area to all Europeans.

The day held at the Court of Toulouse on October 25 was a key event of the «European Day of Civil Justice.»

Devoted to «the significance of European law in local practices of legal professionals», the event brought together representatives of the Ministry of Justice, representatives of the European Commission and the Council of the European Union, representatives of the Council of Europe, as well as judges, professors, judicial officers, notaries, lawyers and in house counsels.

Many European texts have been adopted in recent years (divorce, maintenance obligations or enforcement of judgments in civil matters). These texts have fundamentally changed the practices of legal professionals. «*In ten years, the EU has provided all practitioners with performing European tools*» recalled Laurent Vallée, Director of Civil Affairs at the French Ministry of Justice, at the opening of the work.

Workshops, led to the initiative of legal profession and animated by institutional representatives and legal professionals enriched the debates on the following topics:

- The European public order and the treatment of civil litigation;
- The European mobility of professionals;
- The free movement of authentic acts;
- The improvement of the enforcement of judgments within the European Union;
- The enforcement of the European partnership acts.

It was the opportunity to deepen knowledge of European law and to share experiences.

Judicial officers were particularly involved in the organization of the workshop on the improvement of the enforcement of judgments within the European Union. This workshop was chaired by Guillaume Raynaud, Chairman of the Departmental Chamber of Judicial officers of Haute-Garonne, who has compiled an inventory of the interference of European law in the daily practice of the judicial officer. The floor was then given to Nathalie Fricero, Professor at the University of Nice - Sophia Antipolis, who exposed the progressive elimination of obstacles to free movement of judgments in Europe and the articulation with the principle of territoriality of enforcement proceedings. Patricia De Luca, member of the Directorate General «Civil Justice» of the European Commission, presented the

work initiated by the European Commission to improve the cross-border recovery of debts. It was an opportunity to explain the new proposal for a regulation creating a European bank account preservation order, published last July. Geraldine Cavallé, EJE Project Manager, presented the progress made by the implementation of this project and the EJE website which provides the public with information on law and enforcement procedures in the different Member States and a European directory of judicial officers. Finally, Patrick Safar, Member of the French National Chamber of judicial officers and «contact point» within the European Judicial Network in civil and commercial matters (EJNCC) presented the role of the EJNCC in improving the enforcement of judgments in Europe and the support it is likely to bring in the daily practice of the bailiff.

The reflections in the various workshops have provided proposals to improve legal and judicial practice of civil justice in Europe. Thus it was recalled the need to improve the training of judges, lawyers but also of the judicial officers, key actors of this area of justice. «*To implement judgments would require that professionals are trained in procedures of other countries of the European Union*», insisted Natalie Fricéro. It was also proposed to develop training modules and explanatory dictionary of legal terms in order to understand and implement concept from a legal system to another.

European news

Publication of a communication on the European judicial training

On 13 September 2011, the European Commission has adopted the Communication «Building trust in EU-wide justice: a new dimension to European judicial training» (COM(2011) 551 final). This Communication sets up European judicial training as a priority in line with the Action Plan implementing the Stockholm Programme.

There are around 1.4 million legal practitioners in the EU, including judges, prosecutors, lawyers, notaries, bailiffs and court staff. The objective of the European Commission is to enable half of these legal practitioners to participate in European judicial training activities by 2020 through the use of all available resources at local, national and European level. The aim is to equip legal practitioners to apply European law – which is part of their role at national level. It will also help to build mutual trust between Europe's different legal systems and improve the implementation of European legislation.

To achieve this, it calls on national governments, councils for the judiciary, professional bodies and judicial training institutions both at EU and national level to commit to integrating EU law into their training programmes and to increasing the volume of courses and participants. The Commission itself intends to facilitate access to EU funding to support high-quality training projects, including e-learning. The Commission will also launch a two-week exchange programme for new judges and prosecutors from 2014 onwards. The Commission will support training by sharing practical guidelines on training methodologies and evaluation. The Commission will also encourage public-private partnerships to develop innovative training solutions. The Commission will build on the strengths of all existing training providers, including the European Judicial Training Network (EJTN), the Academy of European Law (ERA) and the European-level legal professional organisations.

■ Read the communication - http://ec.europa.eu/justice/criminal/files/2011-551-judicial-training_en.pdf

The competent jurisdiction when the current domicile of the defendant is unknown, in accordance with Brussels I Regulation

The Court of justice of the European Union finds that, in a case where a consumer's current domicile is unknown, the courts of the place where the consumer had his last known domicile may have jurisdiction to deal with proceedings against him. The fact that it is not possible to identify the current domicile of the defendant must not deprive the applicant of his right to bring proceedings

A Czech bank and a German national concluded a mortgage loan contract for the purpose of financing the purchase of immovable property. At the time when that loan contract was concluded, Mr Linder was domiciled in Czech Republic and, pursuant to that contract, was under an obligation to inform the bank of any change of domicile. In addition, that contract provided that the local court of the bank, determined according to its registered office, would have general jurisdiction in respect of any disputes. The bank brought an action before the Cheb District Court (Czech Republic) by which it sought an order requiring Mr Lindner to pay to it the sum by way of arrears on the loan. That court established that Mr Lindner was no longer staying at the address indicated in the contract and it was unable to determine where he was residing in the Czech Republic. In those circumstances, the Czech court made a reference to the Court of Justice for a preliminary ruling in which it requested an interpretation of the regulation on jurisdiction 1 and, inter alia, asked whether that regulation precludes a provision of a Member State's national law under which proceedings may be brought against persons whose domicile is unknown.

The Court observes, first of all, that the regulation does not expressly define jurisdiction in a case where the domicile of the defendant is unknown. The Court goes on to point out that, according to the regulation, proceedings against a consumer must be brought by the other party to the contract in the courts of the Member State in which the consumer is domiciled. If, however, the national court is unable to identify the place where the consumer is domiciled within the Member State of that court, it must then examine whether he is domiciled in another Member State of the European Union. If the national court, first, is unable to identify the place of domicile of the consumer in the territory of the European Union and, second, has no firm evidence to support the conclusion that the consumer is in fact domiciled outside the European Union, the rule according to which, in the event of a dispute, jurisdiction is vested in the courts of the Member State in which the consumer is domiciled must be understood as referring not only to his current domicile but also to his last known domicile.

Such an interpretation of the regulation enables the applicant to identify easily the court in which he may sue and the defendant reasonably to foresee before which court he may be sued. Likewise, it enables a situation to be avoided in which the fact that it is not possible to identify the current domicile of the defendant precludes determination of the court having jurisdiction, thereby depriving the applicant of his right to judicial redress. In addition, such a solution ensures a fair balance between the rights of the applicant and those of the defendant in a case in which the defendant was under an obligation to inform the applicant of any change of address occurring after a long-term mortgage loan contract had been signed. Consequently, the Court finds that the Czech courts have jurisdiction to deal with the proceedings which the bank has brought against Mr Lindner in so far as it has been impossible for them to identify his current domicile.

Lastly, the Court considers the possibility, provided for under Czech law in such circumstances, of taking further steps in the proceedings without the defendant's knowledge through the appointment of a guardian ad litem on whom notification of the action may be served. The Court observes that, while those measures constitute a restriction of the rights of the defence, that restriction is, none the less, justified in view of the applicant's right to effective protection. Indeed, were it not for the appointment of a guardian ad litem on whom notification of the action may be served, the applicant would be unable to exercise that right against someone whose domicile is unknown. The Court concludes, however, that the court seised of the matter must always satisfy itself that all necessary steps have been taken to trace the defendant in order to ensure that he can defend his interests.

■ Read the judgment of the court - <http://curia.europa.eu/juris/document/document.jsf?text=&docid=114583&pageIndex=0&doclang=en&mode=doc&dir=&occ=first&part=1&cid=158149>

Grounds for dispute of the declaration of enforceability of a judgment / Refusal of the ground that there has already been compliance with the judgment in the Member State of origin

The court of justice has received a reference for a preliminary ruling concerning the interpretation of Article 45 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

The reference has been made in the context of proceedings between Prism Investments BV, a company governed by Netherlands law, and Mr van der Meer, in his capacity as receiver in the liquidation of Arilco Holland BV, the Netherlands subsidiary of Arilco Opportune NV, a company governed by Belgian law, concerning enforcement in the Netherlands of a judicial decision ordering payment of a sum of money delivered by a Belgian court.

Mr van der Meer applied to the Dutch competent judge, pursuant to Article 38 of Regulation No 44/2001, for the judgment delivered on 5 December 2006 by the Hof van Beroep te Brussels, so far as concerned the order that Prism Investments pay Arilco Holland the sum of EUR 1 048 232.30, to be declared enforceable. That application was granted. Prism Investments then brought, pursuant to Article 43 of Regulation No 44/2001, an action for annulment of that order for enforcement before the Dutch competent jurisdiction. It maintained, inter alia, that the judgment of the Belgian court had already been complied with in Belgium by means of a financial settlement. The jurisdiction dismissed the application made by Prism Investments, expressing the view, inter alia, that, under Article 45 of Regulation No 44/2001, a declaration of enforceability can be revoked only on one of the grounds specified in Articles 34 and 35 of that regulation. It noted that compliance with the obligations in question did not come within any of those grounds and could not therefore be taken into account for the purposes of an appeal against the declaration of enforceability, but only at the later stage of actual enforcement. Hearing an appeal in cassation, the Dutch high court is unsure whether Article 45 of Regulation No 44/2001 must be interpreted as meaning that the court dealing with an appeal under Article 43 or Article 44 of that regulation can refuse or revoke a declaration of enforceability on grounds other than those set out in Articles 34 and 35. In particular, it is unsure whether the ground that there has already been compliance with

the judgment in the Member State of origin of that judgment can be advanced not only in a dispute relating to enforcement, but also in actual enforcement proceedings.

By judgment of 13 October 2011, the Court of justice observes that the grounds for dispute of the declaration of enforceability of a judgment delivered in a Member State other than the Member State in which enforcement is sought that may be relied upon are expressly set out in the Regulation No 44/2001. That list, the items of which must, in accordance with settled case-law, be interpreted restrictively, is exhaustive in nature. The ground for revocation of the declaration of enforceability relied upon by the appellant and relating to compliance with the judgment in the Member State of origin – that is to say, Belgium – is not one of those grounds which the court or tribunal of the Member State in which enforcement is sought – in the present case, the Kingdom of the Netherlands – has jurisdiction to review.

The Court of justice adds that it must be noted that no provision of Regulation No 44/2001 permits the refusal or revocation of a declaration of enforceability of a judgment that has already been complied with because such a situation does not deprive that judgment of its enforceable nature, which is a characteristic specific to that judicial act. Compliance with a judicial decision does not in any way deprive that decision of its enforceable nature and also does not lead to it being attributed, at the time of its enforcement in another Member State, with legal effects that it would not have in the Member State of origin. Recognition of the effects of such a judgment in the Member State in which enforcement is sought, which is precisely the subject of the enforcement procedure, concerns the specific characteristics of the judgment in question, without reference to the elements of fact and law in respect of compliance with the obligations arising from it.

Finally, the Court of justice adds that such a ground may, by contrast, be brought before the court or tribunal responsible for enforcement in the Member State in which enforcement is sought. In accordance with settled case-law, once that judgment is incorporated into the legal order of the Member State in which enforcement is sought, national legislation of that Member State relating to enforcement applies in the same way as to judgments delivered by national courts.

■ Read the judgment of the Court - <http://curia.europa.eu/juris/document/document.jsf?text=&docid=111225&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=548189>

The term of ‘center of main interest’ in the Regulation on insolvency proceedings

Having received a reference for a preliminary ruling concerning the interpretation of Article 3 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings, the Court of justice said, by a judgment date October 2011, 20, the term of «center of main interests».

The reference was made in proceedings between Interedil Srl, in liquidation, on the one hand and Fallimento Interedil Srl and Intesa Gestione Crediti SpA, of which Italfondario SpA is the successor, on the other, concerning a petition for bankruptcy filed by Intesa against Interedil. Interedil challenged the jurisdiction of the Italian court on the ground that, as a result of the transfer of its registered office to the United Kingdom, only the courts of that Member State had jurisdiction to open insolvency proceedings.

The Court hereby rules that the term ‘center of a debtor’s main interests’ in Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted by reference to European Union law. For the purposes of determining a debtor company’s main center of interests, the second sentence of Article 3(1) of Regulation No 1346/2000 must be interpreted as follows:

■ a debtor company’s main center of interests must be determined by attaching greater importance to the place of the company’s central administration, as may be established by objective factors which are ascertainable by third parties. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in that provision cannot be rebutted. Where a company’s central administration is not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company’s actual center of management and supervision and of the management of its interests is located in that other Member State;

■ where a debtor company’s registered office is transferred before a request to open insolvency proceedings is lodged, the company’s center of main activities is presumed to be the place of its new registered office.

Finally, the Court adds that the term ‘establishment’ within the meaning of Article 3(2) of Regulation No 1346/2000 must be interpreted as requiring the presence of a structure consisting of a minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.

- Read the judgment of the Court - <http://curia.europa.eu/juris/document/document.jsf?doclang=EN&text=&pageIndex=1&part=1&mode=lst&docid=111587&occ=first&dir=&cid=558762>

To depart from previous rulings and right to a fair trial

Relying on Article 6 § 1 (right to a fair trial), the applicant complained that the French Court of Cassation had departed from precedent in an “unjustified and arbitrary” manner, the European Court of Human rights observed, by a judgment date 9 September 2011 (Boumaraf / France, req. n°32820/08), that the requirement of judicial certainty and the protection of legitimate expectations did not involve a right to settled case-law. It pointed out in that connection that the development of case-law was not at odds with the proper administration of justice. However, where there was well-established case-law on a given question, the highest court was obliged to give substantial reasons to explain its departure from precedent, otherwise the right of a party to obtain a sufficiently reasoned decision would be breached.

- Read the judgment of the European Court of Human rights - <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=891635&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>

Publication of a communication and a proposal for on regulation on a Common European Sales Law

On 11 October 2011, the European Commission published a communication « **a Common European Sales Law to facilitate cross-border transactions in the single market** » and a proposal for a regulation on a Common European Sales Law.

The European Commission proposed an optional Common European Sales Law to help break down these barriers and give consumers more choice and a high level of protection by offering a single set of rules for cross-border contracts in all 27 EU countries.

The Common European Sales Law will be applicable for both business-to-consumer and business-to-business transactions, to cross-border contracts for the sale of goods or digital content contracts if both parties voluntarily and expressly agree to it and if one party is established in a Member State of the EU. Member States will have the choice to make the Common European Sales Law applicable to domestic contracts as well.

The Commission’s proposal now needs approval from EU Member States and the European Parliament.

- Read the communication - http://ec.europa.eu/justice/contract/files/common_sales_law/communication_sales_law_en.pdf
- Read the proposal for a regulation - http://ec.europa.eu/justice/contract/files/common_sales_law/regulation_sales_law_en.pdf

Disputes between consumers and traders - Publication of proposals for Alternative Dispute Resolution

On 29 November 2011, the European Commission puts forward proposals for faster, easier and cheaper solutions to disputes between consumers and traders. It is first a proposal for Directive on Alternative Dispute Resolution (ADR) that will ensure that quality out-of-court entities exist to deal with any contractual dispute between a consumer and a business. Under the proposal, ADR entities will have to meet certain quality criteria, i.e. be well-qualified impartial, transparent, effective and fair ; businesses will inform customers about the ADR entity which can deal with a potential contractual dispute with them and ADR entities will resolve the disputes within 90 days. It is also a proposal for a Regulation on Online Dispute Resolution that will create a EU-wide online platform (‘ODR platform’) providing consumers and businesses with a single point of entry for resolving on-line the disputes concerning purchases made on-line in another EU-country. This single European point of entry will automatically send the consumer’s complaint to the competent national ADR entity facilitate the resolution of the dispute within 30 days.

- Read the proposal for a directive on Alternative Dispute Resolution - http://ec.europa.eu/consumers/redress_cons/docs/directive_adr_en.pdf
- Read the proposal for a regulation on Online Dispute Resolution - http://ec.europa.eu/consumers/redress_cons/docs/odr_regulation_en.pdf

To facilitate the cross-border exchange of information on road safety related traffic offences

The Directive 2011/82/EU of the European Parliament and of the Council of 25 October 2011 facilitating the cross-border exchange of information on road safety related traffic offences was published in the Official Journal of the European Union.

This Directive shall apply to the following road safety related traffic offences:

- (a) speeding;
- (b) non-use of a seat-belt;
- (c) failing to stop at a red traffic light;
- (d) drink-driving;
- (e) driving under the influence of drugs;
- (f) failing to wear a safety helmet;
- (g) use of a forbidden lane;
- (h) illegally using a mobile telephone or any other communication devices while driving.

The directive establishes a procedure for the exchange of information between Member States. For the investigation of the road safety related traffic offences referred, the Member States shall allow other Member States' national contact points access to the following national VRD, with the power to conduct automated searches on (a) data relating to vehicles; and (b) data relating to owners or holders of the vehicle. Any searches in the form of outgoing requests shall be conducted by the national contact point of the Member State of the offence using a full registration number.

The directive must be transposed by Member States by 7 November 2013.

Read the directive - <http://eur-lex.europa.eu/Notice.do?val=625454%3Acs&lang=en&list=625454%3Acs%2C558425%3Acs%2C56466%3Acs%2C&pos=1&page=1&nbl=3&pgs=10&hwords=&checktexte=checkbox&visu>

The development of E-justice in Europe

The launch of e-curia

The Court of Justice of the European Union has launched 'e-Curia', an application allowing procedural documents to be lodged and accepted by electronic means. e-Curia is a new service that is free of charge and intended for the representatives of parties before the three courts constituting the Court of Justice of the European Union (Court of justice, General court, Civil service tribunal). All procedural documents can now be exchanged electronically with the court registries by means of this secure application. Lawyers and agents of the Member States and of the European Union institutions, bodies, offices and agencies who use e-Curia will no longer have to send paper copies of procedural documents and will be exempt from having to produce certified copies of those documents. The functionalities of e-Curia are the filing of procedural documents, the service of procedural documents and consulting procedural documents. Persons interested in using e-Curia must request the creation of an account by means of an application form: <http://curia.europa.eu/e-Curia>.

New functionalities in the e-justice Portal

Small claims online forms

Council Regulation 861/2007 of 11 July 2007 establishing a European Small Claims Procedure seeks to improve and simplify procedures in civil and commercial matters where the value of a claim does not exceed 2000 €. The Small claims procedure operates on the basis of standard forms. It is a written procedure unless an oral hearing is considered necessary by the court. The Regulation provides for four standard forms. Now, - you can use the European e-Justice Portal to fill in and download forms concerning the European small claims procedure. If you have already started a form and saved a draft, you can upload it using the «Load draft» button.

■ Consult the page "Small claims forms" - https://e-justice.europa.eu/dynform_intro_form_action.do?idCountry=eu&refresh=1&idTaxonomy=177&plang=en&init=true&refresh=1

Online forms wizard

The e-justice portal has also developed an «online forms wizard» to help you complete forms relating to the European order for payment or small claims.

- Consult the “wizard” - https://e-justice.europa.eu/dynform_wizard_show_action.do

The launch of the EJS project (E-justice service of documents)

The partners in the EJS project, which brings together the representative organisations of the profession of judicial officer in France, Belgium, Luxembourg, the Netherlands, Hungary, Estonia, and the International Union of Judicial officers and the French Ministry of justice, launched the EJS project in Paris, in last November 22nd and 23rd. Cofinanced by the European Commission, the EJS project aims at creating a decentralized and interoperable electronic system for efficient and secure exchange of documents between judicial officers under the EC Regulation No 1393/2007 of the European Parliament and of the Council on “*the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)*”. Because of the e-Codex project and the EJS project are two projects co-financed by the European Union to meet the same objective, namely to improve the interoperability between national systems of electronic communication, for the development of E-justice in Europe, the EJS partnership is committed to working in closely cooperation with the e-codex consortium to ensure better coordination and full interoperability of technical solutions proposed by the two projects. As a reminder, the e-codex project aims to “*improve the cross-border access of citizens and businesses to legal means in Europe as well to improve the interoperability between legal authorities within the EU*”.



**Comments on the Proposal for a regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters
(COM (2011) 445 final – 25 July 2011)**

The partners in the EJE project, which brings together the representative organisations of the profession of judicial officer in Germany, Belgium, Scotland, Hungary, Italy, Luxembourg, the Netherlands and Poland in order to improve the enforcement of court judgments in Europe, support the creation of a European procedure for the attachment of bank accounts.

The partners of the EJE project welcome the initiative of the European Commission which aims to establish a European bank account preservation order. They are also delighted at the recognition of the role of enforcement agents in the implementation of a European freezing order, since enforcement agents are the best guarantee of legal certainty, of the speed of the procedure and of the protection of the rights of the parties involved.

Indeed, at present, procedures for recovering debts from another country's jurisdiction are complex and expensive. A creditor wishing to attach sums deposited in a foreign bank account must then refer the matter to the judge in the country where the bank is located.

But there are disparities between Member States' national legislation. Obstacles for creditors are created by the differences in legal systems, varying procedural requirements and linguistic barriers, which all results in difficult access to the law and entails additional costs and delays in implementing the procedure, even though the main point of a procedure to attach bank accounts is that it be done quickly.

However, the attachment of a debtor's bank accounts should be an effective way for a creditor to recover sums of money due to him. At a time when, because of the free movement of people, companies, services and goods, debtors increasingly have bank accounts in different Member States and at a time when the development of technologies has enabled sums of money to be transferred very quickly from one Member State to another, the current system does not allow these funds transfers to be blocked just as quickly and at a low cost.





Given these obstacles, it seems to us that it is a necessity to create a European order for the attachment of bank accounts which would enable accounts in different Member States of the EU to be attached while still ensuring a high degree of protection of debtors, in particular through allowing the notification of the attachment at short notice.

However, a high level of protection of the rights of parties, in particular the debtor's right, should be ensured. A judicial officer's intervention – as the enforcement agent under the European procedure for the attachment of bank accounts - guarantees legal certainty and the protection of the debtor's rights. For the procedure's effectiveness to be enhanced and for the debtor to be fully protected, judicial officers/enforcement agents are the key agents to make the attachment of the property in the hands of the bank and to notify the debtor of the attachment. This protection is crucial, given that a European order for the attachment of bank accounts would be issued following ex parte proceedings. Notification of the debtor is the first of these guarantees. Only the judicial officer is able to ensure that the debtor is given adequate information.

However, the partners of the EJE project consider that some articles must be clarified and consequently wish to make the following comments.

❖ ***Application for a EAPO – “the information on the account(s) in accordance with Article 16” (article 8. 2. c)***

In the application form, the claimant must provide “the information on the account(s) in accordance with Article 16.

The article 16 provides that : « *Unless the claimant requests that the competent authority obtain account information pursuant to Article 17, that claimant shall provide all information with regard to the defendant and the defendant's bank account or accounts necessary to enable the bank or banks to identify that defendant and his/her account(s), including the following:*

- (a) the full name of the defendant,*
- (b) the name of the bank with which the defendant holds one or several accounts to be preserved as well as the address of the bank's headquarters in the Member State where the account is located, and*

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(c) either

(i) the account number or numbers,

(ii) the defendant's full address,

(iii) where the defendant is a natural person, his date of birth or national identity or passport number, or

(iv) where the defendant is a legal person, the number of that legal person in the business register ».

This is information « necessary to enable the bank or banks to identify that defendant and his/her account(s) ».

In this regard, the EJE partners emphasize that the indication of an account number in the application form (§ 4.4. of the application form - Appendix I) should not have the effect of limiting the order to a single bank account as soon as this information is intended to "enable the bank to identify the defendant and his / her accounts." Thus, it must be expressly mentioned that the order must have effect on other accounts that are held by the debtor within the same bank. In this regard, article 28 provides the possibility of issuing an order for several accounts.

❖ ***Application for a EAPO – the “list of the evidence provided or offered to be provided by the claimant” (article 8. 2. h)***

The EJE partners underline the necessity of giving the judge some discretion regarding the level of evidence to be provided, in particular with regard to the circumstances invoked as the basis of the claim, those justifying issue of the order and the need to ensure a very quick procedure. We considered that the need for a quick procedure justifies in particular that the level of proof to be brought could be adopted to the circumstances of the cause.

❖ ***Security to be provided by the claimant (article 12)***

Article 12 provides that: « *Before issuing an EAPO, the court may require the provision of a security deposit or an equivalent assurance by the claimant to ensure compensation for any damage suffered by the defendant to the extent the claimant is liable to compensate such damage under national law* ».

The EJE partners support the unsystematic character of the security deposit resulting from the using of "may" (instead of "shall" which had been considered during the work leading to this proposal).





Indeed, the systematic requirement of a security amount which is proportionate to the damage which could be caused to the defendant would result in reducing the access of the creditor to justice and law, especially when the creditor is a consumer. The requirement for a security, which could be justified, should not have the effect of hindering individuals and consumers, holders of small and average claims, who would like to implement the European bank accounts preservation order. In addition, the requirement of a security must not conflict with another objective set by the regulation, namely the need for a quick procedure. Indeed, the requirement of a security should not result in the postponement of the issuing of the order. Yet, as far as the security would be of such an amount that it could not be a security deposit, the citizen would have no other choice than to use a bank security, which implies additional delays because of the various steps that have to be carried out with the bank (mostly, to obtain a bank security requires an extension of 48 hours).

This is particularly the reason why this article should be reviewed. As currently drafted, this article could be interpreted by default as follows: a security deposit should be required by the judge when, under national law, the applicant shall repair the damage suffered by the defendant. Even when the applicant may be required, under national law, to repair the damage suffered by the defendant, the judge should not, for the reasons stated above, require a security deposit, in a systematic way.

❖ ***Request for obtaining account information (article 17)***

The partners of the EJE project welcome the recognition by the European institutions of the difficulty for the enforcement agents to access, in some situations, relevant information on a debtor's. Facilitating the access of the enforcement agent to this information offers guarantees of a better enforcement. Furthermore, facilitating the access to relevant information on debtor's assets answers to one of the objectives of the regulation which is the speed of the procedure: it is imperative to allow the enforcement agents easily access to relevant information so as to implement quickly the procedure while answering at best the legal requirements, required in particular in the article 16 (Information on the account).

In addition, this article provides the necessary guarantees: the competent authority will operate one of two methods for obtaining information under article 17 on the basis of the EAPO which has been transmitted by the court or issuing authority.

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However, the EJE partners would like to point out that :

- Article 17 provides that « The court or issuing authority shall issue the EAPO pursuant to Article 21 and transmit it to the competent authority in accordance with Article 24 ».

Article 24 is concerned with the « Service of the EAPO on the bank ». It doesn't deal with the transmission of the EAPO to the competent authority as such.

Thus, if the competent jurisdiction and the competent authority for enforcement are in different Member States, article 24 states that « The person or authority responsible for service in the Member State of origin shall transmit the EAPO directly to the competent authority of the Member State of enforcement ».

However, Where the EAPO was issued by a court or the issuing authority in the Member State of enforcement, the proposal provides only that « service on the bank shall be effected in accordance with the law of that Member State". There is no provision regarding the transmission of the EAPO to the competent authority which must be able to use appropriate means for obtaining the information under article 17. Accuracy must be made on this point.

- The application form and the request for obtaining account information

Article 17 provides that "Where the claimant does not dispose of all the account information required pursuant to Article 16, that claimant may request that the competent authority of the Member State of enforcement obtain the necessary information. Such request shall be made in the application for an EAPO ».

However, the application form in Annex I does not expressly require the applicant to make that request. Indeed, in point "4. Details of the defendant's bank account », the application form only informs the applicant that " *It is important to give as much information as possible about the defendant's bank account to save time and costs. If you cannot give more information than the one referred in section 4.1., the competent authority in the Member State(s) where the account is located can try to obtain additional information from the banks or existing public registers. This procedure will, however, take some time and you might be charged a fee for the information ».*

The form should show greater clarity in this regard and take note of Article 31 – Costs relating to competent authority which provides that the handling of a request for obtaining account information as referred to in Article 17 shall correspond to single fixed fees determined by the relevant Member State in advance.





❖ **Amount of the EAPO (article 18)**

Article 18 provides that :

1. *Where the EAPO was issued on the basis of a judgment, court settlement or authentic instrument enforceable in the Member State of origin, the claimant shall be able to secure the amount set out in the EAPO as well as any interest and costs specified therein.*
2. *In all other cases, the claimant shall be able to secure the amount of the claim as well as any interest which has accrued on the claim.*

The EJE partners question the nature and the form of the security that the applicant must provide for the amount of the claim and consider that clarification should be made on this point.

❖ **Service of the EAPO on the bank and Service of the EAPO on the defendant (articles 24 and 25)**

The implementation of the EAPO and the service of the order on the debtor by the hand of a judicial officer – enforcement authority - is the best guarantee of the protection of the rights of the debtor. Only the judicial officer is able to ensure adequate information of the debtor.

However, the EJE partners invite the European institutions to provide additional information :

- Time limit in which the EAPO shall be served on the bank :

Article 24 paragraph 3 subparagraph c) provides that " *The competent authority shall serve the EAPO on the bank or banks specified therein. The competent authority shall take all necessary steps to effect service of the order within 3 working days of receipt at the latest* ». This article does not reflect the situation in which the competent authority receive an EAPO which would require obtaining additional information in accordance with the procedure laid down in Article 17.

- Time limit in which the EAPO shall be served on the defendant:

Article 25 paragraph 1 of the proposal is as follows: " *The defendant shall be served with the EAPO and all documents submitted to the court or competent authority with a view to obtaining the order without undue delay after service on the bank has been effected pursuant*

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to Article 24 and the bank has issued the declaration pursuant to Article 27”.

The project partners EJE consider the notion of "undue delay" cannot provide legal security required by the implementation of a EAPO. A specified period, which could be 8 days from the date of service of the EAPO, should be stated.

❖ **Implementation of the EAPO (article 26)**

Article 26 paragraph 1 provides that *«A bank served with a EAPO shall implement it immediately upon receipt by ensuring that the amount specified therein is not transferred, disposed of or withdrawn from the account or accounts designated in the order or identified by the bank as being held by the defendant »*. The EJE partners are questioning the scope in time of the order and the possibility to grant the competent authority to serve again the EAPO within the period of its validity.

❖ **Declaration by the bank (article 27)**

The bank shall inform the competent authority and the claimant whether and to what extent funds in the defendant's account have been preserved within 3 working days following receipt of the EAPO. The EJE partners question the basis of this three-day period regarding the principle of immediate implementation of the EAPO.

❖ **Preservation of several accounts (article 28)**

Article 28 provides that :

« 1. Where the EAPO covers several accounts held by the defendant with one and the same bank, the bank shall implement it only up to the amount specified therein.

2. Where one or more EAPOs or equivalent protective orders under national law have been issued covering several accounts held by the defendant with different banks, whether in the same or in different Member States, the claimant shall have a duty to effect the release of any amount specified therein which exceeds the amount stipulated in the EAPO. Such release shall be effected within 48 hours following the receipt of the first bank's declaration pursuant to Article 27 showing such excess. The release shall be effected through the competent authority of the respective Member State of enforcement ».

The EJE partners are questioning the process of such a release to be effected by the applicant through the competent authority, especially considering that different competent authorities would be involved when the accounts are located on different Member States.





❖ **Costs (articles 30 / 31 / 42)**

Regarding the costs relating to the banks, the EJE partners welcome the obligation on Member States to determine a single fixed fees. It is important that this information is made available on the European Judicial Atlas in Civil matters. . Moreover, the practice carried out by banking establishments of levying these charges on the part of the bank account immune from attachment, even though such an attachment would be ineffectual due to the immunity of the sum in the account from attachment, must be prohibited.

Regarding the costs relating to competent authority, the EJE partners welcome the determination of single fixed fees in the enforcement of the EAPO or the handling of a request for obtaining account information as referred to in Article 17(4).

Regarding the costs of proceeding, which shall be borne by the unsuccessful party (article 42), the EJE partners consider that must be expressly included in this provision the costs relating to the banks and to the competent authority but also the costs of cross-border service of documents (in accordance with Regulation (EC) No. 1393/2007) and translation costs.

❖ **Right to provide alternative security (article 38)**

Article 38 provides that « *The competent authority of the Member State of enforcement shall terminate the enforcement of the EAPO if the defendant provides to that competent authority a security deposit of the amount specified in accordance with paragraph 2, or equivalent assurance, including bank guarantee, as an alternative means to safeguard the rights of the claimant* » (The EAPO shall specify the amount of the security necessary to terminate enforcement of the order).

The EJE partners consider that there should be a second alternative to ensure that the debtor can instruct the bank to release the sum by the mean of a standard form that would be delivered to the debtor with the order and could be return to the bank within a specified period through the competent authority.